



**Billing Code 6325-63-P**

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 890**

**RIN: 3206-AM86**

**Federal Employees Health Benefits Program Modification of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules**

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule to modify eligibility for enrollment under the Federal Employees Health Benefits (FEHB) Program to certain temporary, seasonal, and intermittent employees who are identified as full-time employees. This final rule follows a notice of proposed rulemaking published July 29, 2014. This regulation will allow newly eligible Federal employees to enroll no later than January 2015.

DATES: This final rule is effective [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Marguerite Martel, Senior Policy Analyst at (202) 606-0004.

**SUPPLEMENTARY INFORMATION:**

OPM is modifying eligibility for coverage under the Federal Employees Health Benefits (FEHB) Program to certain temporary, seasonal, and intermittent Federal employees who are

expected to work a full-time schedule, which is generally based on the definition of full-time employee under section 4980H of the Internal Revenue Code (IRC), for at least 90 days.

Pursuant to 5 U.S.C. 8913(b), OPM has broad authority to prescribe the conditions under which employees are eligible to enroll in the FEHB program and is empowered to include or exclude employees on the basis of the nature and type of their employment or conditions pertaining to their appointments, including the duration of the appointment. OPM proposed this modification in a notice of proposed rulemaking on July 29, 2014. The proposed rule had a 30 day comment period during which OPM received 100 comments.

#### **Responses to comments on the proposed rule:**

OPM received comments from individual members of the public, Federal employees, Federal agencies, Federal shared service providers, tribal organizations, and public employee unions. The majority of the comments were positive. Many members of the public, Federal employees, and their families expressed appreciation for the coverage changes. This rule would create a more even playing field for similarly situated employees.

Some Federal agencies expressed concern about the effect on the budget of this coverage change, stating they may revisit their staffing models (such as hiring a different mix of temporary, seasonal, and intermittent staff) to accommodate the rule change. OPM recognizes that agencies will have to budget for FEHB government contributions for those newly eligible employees who elect to participate. OPM also recognizes that agencies may reconsider staffing arrangements in light of this rule change. OPM continues to believe that this coverage change is consistent with the Federal government's role as a model employer.

One commenter suggested that newly eligible temporary, seasonal, and intermittent employees receive a lower government contribution than is available to currently eligible employees. OPM understands that such a change would lessen the regulation's impact on agency budgets. However, OPM's goal is to make affordable health insurance more widely available to full-time employees and therefore declines to lower the government contribution.

Several commenters raised concerns that employing agencies may limit appointments to fewer than 90 days or limit work hours to fewer than 130 hours in a month to avoid providing health insurance to temporary, seasonal, and intermittent employees. OPM believes employing agencies will use available staffing authorities to meet the needs of their workload, rather than changing staffing models in light of this rule.

One commenter was concerned that certain agencies with large seasonal workforces will be affected more than others that do not use seasonal hiring authorities. OPM recognizes that this is true, but continues to believe that this coverage change is consistent with the Federal government's role as a model employer.

One commenter was concerned that the money saved by increasing retirement contributions of new permanent staff will be spent on new benefits for temporary employees. The changes in retirement benefits is independent of this rulemaking, which OPM believes is the best way to align access to health benefits across different classes of workers.

Two commenters raised concerns about whether seasonal Federal employees could afford FEHB premiums. It is important to note that these newly eligible employees will receive the

same government contribution as currently eligible Federal employees. OPM believes that the government contribution to FEHB is sufficient.

OPM received numerous questions from Federal entities, including agencies and shared service providers, about implementation of the proposed rule. These question topics included timing, necessary system changes, division of responsibilities between the agency and shared service provider, and identification of newly eligible employees. These matters are important for implementation, but are outside the scope of this regulation and will be handled in forthcoming OPM guidance.

A commenter asked if those temporary, seasonal, and intermittent employees who separate from service would be eligible for the 31-day continuation of coverage that is available to other FEHB enrollees when eligibility terminates. The answer is yes: the 31-day continuation of coverage will be available to the enrollee on the same terms as it is for other FEHB enrollees.

One commenter asked if FEHB coverage under this proposal would qualify toward the 5-year continuous coverage requirement prior to retirement. FEHB coverage for these newly eligible employees will count toward the requirement that Federal retirees maintain FEHB coverage for 5 years before retirement in order to continue FEHB enrollment into retirement. Note that employees carrying FEHB into retirement must also be eligible to participate in a qualifying retirement plan. This FEHB rule does not change any employee's eligibility to participate in a qualifying retirement program.

Two commenters asked about the IRC section 6056 requirements for large employers to report on availability of health insurance to full-time employees. Those requirements fall outside

the scope of this rule. OPM plans to issue guidance to Federal agencies and payroll providers on IRC section 6056 reporting in a separate communication.

One commenter asked about whether this modification would apply to students and interns working for Federal agencies. Consistent with current policy, a paid student or intern who meets the criteria for coverage will be eligible to enroll in an FEHB plan. One commenter asked about whether Special Assistant United States Attorneys (SAUSAs) would be included. To the extent that a SAUSA works in a pay status meeting the criteria for coverage, the SAUSA will be eligible to enroll in an FEHB plan.

#### **Suggestions to amend the proposed rule**

OPM received nearly identical comments from several tribal organizations expressing concern with the proposed language at § 890.301(k) that would allow certain non-Federal government entities to request a waiver from the changes in this rule. The proposed rule language stated that such a waiver would be granted at the sole discretion of the OPM Director if the non-Federal employer demonstrates that the modification would interfere with the employer's self-governance. These comments requested that waivers should be automatic and without pre-conditions for Tribal employers. OPM recognizes that Tribal governments are sovereign and that tribes have the best understanding of their governmental, employment, and financial needs. OPM has taken that into account in this final rule-making with respect to the change in coverage and has modified § 890.301(k) regarding tribal employers.

Several tribal organizations also requested that OPM clarify the application of the common law employee standard to tribal employers. This common law employee standard is

used to determine which employees of tribal employers may be eligible to enroll in FEHB. The proposed rule was limited to a modification of FEHB eligibility for certain temporary, seasonal, and intermittent employees and thus this clarification is outside the scope of this rule.

One commenter raised a concern regarding employees who work 15 or fewer hours per week because they can receive a full Government contribution to FEHB rather than the pro-rated share available to those working from 16 to 32 hours per week. This is governed by definitions in the Federal Employee's Part-Time Career Employment Act, which is outside the scope of this rule.

Several commenters pointed out that the definition of a full-time employee in IRC section 4980H is different from the definition in the Federal Employee's Part-Time Career Employment Act of 1978. OPM is aware of these differing statutory definitions of part-time and full-time, but it is outside the scope of this regulation to change these definitions.

Several commenters asked whether FEHB government contributions would be pro-rated for these newly eligible employees working between 16 and 32 hours per week, as they are for permanent employees. The Federal Employee's Part-Time Career Employment Act excludes temporary and intermittent employees from the definition of "part-time employment." As such, agencies are not authorized to pro-rate government contributions for newly eligible temporary or intermittent employees.

One commenter suggested that the 130 hour per calendar month full-time standard be converted to a biweekly pay period standard, since many Federal agencies use a bi-weekly pay period rather than a month for purposes of pay and timekeeping. OPM assumes that agencies

will continue to use their current methods of pay period-based timekeeping. The 130 hour per month standard in OPM's proposed rule is generally consistent with definitions and methodology outlined in IRS rulemaking under IRC section 4980H<sup>1</sup>. Agencies will be responsible for implementing this rule as appropriate for their systems and therefore OPM believes a regulatory change is not necessary.

Several commenters suggested that OPM should extend other Federal employee health benefits that do not have a government contribution, such as dental and vision insurance, long-term care insurance, and health care flexible spending accounts to temporary, seasonal, and intermittent Federal employees. These suggestions are outside the scope of this rule.

One commenter proposed a different organizational structure for the regulations. OPM believes our original construction is satisfactory and declines to make the suggested change.

One commenter suggested that OPM clarify that FEHB coverage will begin on the first day of employment for these newly eligible employees. For most new employees, coverage is effective on the first day of the first pay period after the employee submits enrollment paperwork. This will be the same for new employees included in this coverage modification. For those who are currently employed as a temporary, seasonal, or intermittent employee, this rule becoming effective will serve as a qualifying life event (QLE) and coverage will become effective according to the existing rules for QLEs.

Several commenters expressed concern that the projected January 2015 implementation date does not allow sufficient time for the system changes to capture, track, and monitor the data

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<sup>1</sup> Note that under IRC section 4980H final regulations, a different hour of service monthly equivalency will apply for an employer using the weekly rule available under the monthly measurement method to determine full-time employee status. See 26 CFR 54.4980H-1(a)(21)(iii) and 54.4980H-3(c)(3).

necessary for this change. Some suggested a more delayed implementation schedule. OPM recognizes the challenges in implementation and is committed to work with agencies and payroll providers on implementation challenges. The rule is intended to be effective no later than January 2015.

### **Changes from proposed rule**

OPM has made several changes to this final rule. The proposed rule used a modified version of the term “regularly scheduled administrative workweek,” which already has a different meaning in other parts of title 5, Code of Federal Regulations. As such, this final regulation eliminates that term and instead refers to “the total hours in pay status (including overtime hours) plus qualifying leave without pay hours.” This new language should avoid confusion with existing regulatory terms.

This final rule clarifies in § 890.102(j)(3) that an employee enrolled under 890.103(j) will be eligible to remain enrolled in FEHB unless the employee exceeds 365 days in nonpay status. This clarification aligns enrollment rules for this newly eligible population with rules for existing FEHB enrollees.

One commenter stated that proposed § 890.102(j)(1)(ii) is confusing. The proposed provision read “If the employing office expects the employee to work for fewer than 90 days, the employee will be eligible to enroll after the completion of a 90 day waiting period.” Accordingly, OPM has amended it to state “If the employing office expects the employee to work for fewer than 90 days and the employee actually works for fewer than 90 days, the employee will generally be ineligible to enroll in FEHB because the employee will not be

employed at the end of the waiting period applicable to these employees. However, if the expectation changes and the employee is expected to work for 90 days or more, that individual is eligible to enroll upon notification by the employing office, but enrollment (including the effective date of coverage) must be no later than the end of the waiting period ending on the 91<sup>st</sup> day after the first day of employment.”

OPM received several comments suggesting changes to how this modification would affect non-career United States Postal Service (USPS) employees. OPM understands that the USPS currently offers affordable employer provided health benefits coverage, separate and apart from FEHB for a majority of its full-time non-career employees, and is working toward implementing this coverage for the rest of these employees. OPM further understands that the category of USPS employees referred to as full-time non-career employees generally corresponds to the category of employees affected by the modification of FEHB eligibility under this final rule. Because the terms and conditions of employment for the class of employees that is affected by this rule already includes, or is anticipated to soon include, an offer of affordable employer provided health benefits coverage, OPM has exempted USPS employees from this final rule.

OPM received a comment that use of the phrase “employer’s need for self-governance” as a justification for waiver of paragraph (j) was confusing. OPM has changed this phrase to “employer’s need to manage its workforce.”

### **Provisions of the final rule**

This final rule modifies eligibility by authorizing enrollment in a FEHB health plan for certain non-Postal Federal employees on temporary appointments and certain non-Postal employees working on seasonal and intermittent schedules. Currently, most employees on temporary appointments become eligible for FEHB coverage after completing 1 year of current continuous employment and, once eligible for coverage, do not receive an employer contribution to premium. Employees working on seasonal schedules for less than 6 months in a year and those working intermittent schedules are excluded from eligibility regardless of the work hours for which they are expected to be scheduled. Some limited exceptions were made to these exclusions for temporary firefighters and emergency response workers in 5 CFR 890.102(h) and (i).

Under this final regulation, non-Postal employees on temporary appointments, non-Postal employees on seasonal schedules who will be working less than six months per year, and non-Postal employees working intermittent schedules will be eligible to enroll in a FEHB health plan if the employee is expected to work a full-time schedule of 130 or more hours in a calendar month. If the employing office expects the employee to work at least 90 days, the employee is eligible to enroll upon notification of the employee's eligibility by the employing office. If the employing office expects the employee to work fewer than 90 days, that individual is considered to be in a 90 day waiting period and is generally ineligible to enroll (because the individual will not be employed at the end of the waiting period). If the expectation changes to at least 90 days, the employee will be eligible to enroll upon notification from the employing office, but no later than the 91<sup>st</sup> day of employment. Temporary, seasonal, and intermittent employees who are expected to work a schedule of less than 130 hours in a calendar month will not be eligible to enroll in a FEHB health plan. Temporary, seasonal, and intermittent employees for whom the

expectation of hours of employment changes from less than 130 hours per calendar month to 130 hours or more per calendar month would become eligible to enroll in an FEHB health plan upon notification from the employing office.

This final rule allows newly eligible employees (employees on an appointment limited to 1 year and employees working on a seasonal or intermittent schedule) to initially enroll under the FEHB program with a Government contribution to premium if they are expected to be employed on a full-time schedule and are expected to work for at least 90 days. Those expected to work fewer than 90 days will be considered in a 90 day waiting period and therefore ineligible to enroll (because the individual will not be employed at the end of the waiting period), unless that expectation changes during the 90 days.

Some temporary employees who have completed 1 year of continuous employment are already eligible for FEHB coverage but without a Government contribution to premium. This final rule allows these employees to enroll in a FEHB plan under 5 CFR 890.102(j) (with a Government contribution to premium) if the employee is determined by his or her employing office to be newly eligible for FEHB coverage under this regulation.

Enrollments for employees newly eligible pursuant to this rule will be accepted during a 60-day period after the employing office notifies employees of their eligibility to enroll in a FEHB health plan. Coverage will become effective as provided for by 5 CFR 890.301. Employing offices must promptly determine eligibility of new and current employees and upon determining eligibility, promptly offer employees an opportunity to enroll in the FEHB Program so that coverage becomes effective no later than January 2015.

While this final regulation modifies FEHB coverage for certain categories of Federal employees, there are other employers who are entitled to purchase FEHB coverage for their own employees or whose employees are otherwise entitled to enroll in FEHB coverage. These other employers may have made or are planning to make other arrangements to provide health insurance for their temporary, seasonal, and intermittent employees. Accordingly, the OPM Director may waive application of this final rule when the employer of an individual not covered by 5 U.S.C. 8901(1)(A) demonstrates to OPM that this rule's requirements would have an adverse impact on the employer's ability to effectively manage its workforce. We expect such instances to be rare. Tribal employers participating in FEHB may waive application of this final rule simply by notifying OPM.

### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds to the list of groups eligible to enroll under the FEHB Program.

### **Executive Orders 13563 and 12866, Regulatory Review**

OPM has examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011).

### **Baseline FEHB Eligibility and Federal Government Employer Shared Responsibility**

This final rule would modify eligibility to enroll in a FEHB plan to certain temporary, seasonal, and intermittent employees who are identified as working full-time. In order to estimate rule-induced impacts, it is necessary to assess the number of full-time Federal

employees who are not currently eligible to participate in the FEHB program or are not currently eligible to have the government pay a portion of their premium, and thus may be affected by the final rule.

The following categories of Federal employees are either excluded by regulation from participating in the FEHB Program or are not currently eligible to have the government pay a portion of their premium:

- Temporary employees with less than a year of service. Per OPM regulations, most of these individuals are not eligible to enroll in FEHB. In 2012 OPM published a regulation extending FEHB eligibility to certain temporary firefighters and some personnel performing emergency response functions.
- Seasonal employees. Seasonal employees working six months or fewer are generally prohibited by regulation from enrolling in FEHB.
- Intermittent employees. Intermittent employees are generally prohibited by regulation from enrolling in FEHB. In 2012, however, OPM published a regulation extending FEHB eligibility to certain intermittent employees engaged in emergency response and recovery work.
- Temporary employees with more than a year of service. Per statute, these employees can enroll in an FEHB plan if they pay the entire premium with no Government contribution.

OPM has worked with Federal payroll providers to assess how many full-time non-Postal Federal employees are without access to FEHB. The data show that all responding executive agencies have a small number of full-time employees (as defined in Section 4980H of the IRC) without access to FEHB. The number without access varies from agency to agency. Within

agencies, the number varies from month to month. Some large departments hire full-time temporary or seasonal employees only for a few months of the year.

The agencies included in our data, in aggregate, offer FEHB to at least 95 percent of full-time employees (as defined in IRC section 4980H) (and their dependents) for all months. Across civilian, non-Postal, executive agencies and all months of the year, our data indicate that there are 300,000 full-time (as defined in IRC section 4980H) employee-months currently ineligible for FEHB (0.9 to 2 percent of the Federal workforce).

The Federal government and its agencies are subject to employer shared responsibility under IRC section 4980H like other applicable large employers. The employer shared responsibility payments only apply if a full-time employee (generally defined as an employee with 130 hours of service in a month) receives a premium tax credit in connection with the purchase of health insurance through an Exchange. We do not know whether the Federal full-time employees not yet eligible for FEHB would, in the absence of this rule, be eligible for premium tax credits in connection with coverage purchased on an Exchange because we lack information on other available sources of health coverage or household income. Even in the extremely unlikely case that all 300,000 full-time employee-months without FEHB did receive a premium tax credit in connection with coverage purchased on an Exchange, the total assessable payment incurred by the Federal agencies would be well below the threshold, set by Executive Order 12866, for economic significance, which is \$100 million.<sup>2</sup>

### Impacts of the Final Rule

Agencies may incur additional FEHB costs; a rough quantification of these potential costs appears below.

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<sup>2</sup> The relevant employer payment would be \$250 per month (or \$3,000 per year), as indexed, only for those full-time employees who receive a premium tax credit in connection with coverage purchased on an Exchange.

We do not know how many individuals without an offer of FEHB, which varies widely from month to month, would enroll in FEHB if it were available. Our similar recent regulations changing FEHB coverage to certain temporary firefighters and disaster recovery workers resulted in very limited take-up, ranging from approximately 10 to 20 percent. We estimate, using enrollment-weighted averages, that FEHB coverage currently costs the government about \$700 per full-time worker per month for affected agencies.<sup>3</sup> Given this average cost estimate, if those currently without FEHB eligibility become eligible and the portion of newly eligible employees who enroll is between 10 and 20 percent, this modification would generate costs to the Federal government of well below the threshold for economic significance, which is \$100 million.

The premium payments newly made by the Federal government are appropriately categorized as costs to society if rule-induced increases in FEHB enrollment would be associated with providing additional medical services to newly-enrolled individuals. To the extent that increases in enrollment do not change how society uses its resources, then premium payments by the government would instead be transfers between members of society. Recipients of these transfers could include newly-enrolled individuals, if they would have paid (or paid more) for medical services or for health insurance premiums in the absence of the rule, or providers and charities, if the effect of the rule is a decrease in uncompensated care.

We lack exact data to quantify rule-induced public health benefits or to refine our estimates of costs and transfers.

## **Federalism**

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<sup>3</sup> This estimate includes FEHB premium payments but not administrative costs to employing agencies. We lack data to quantify the latter.

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

### **List of Subjects in 5 CFR Part 890**

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement

U.S. Office of Personnel Management.

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Katherine Archuleta,  
Director.

For the reasons set forth in the preamble, OPM is amending title 5, chapter I, Code of Federal Regulations as follows:

### **PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111-03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104-106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110-279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105-33, 111 Stat. 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061.

2. Section 890.102 is amended by adding paragraphs (j) and (k) to read as follows:

**§ 890.102 Coverage.**

\* \* \* \* \*

(j)(1) Notwithstanding paragraphs (c)(1), (2), and (3) of this section, a non-Postal employee working on a temporary appointment, a non-Postal employee working on a seasonal schedule of less than 6 months in a year, or a non-Postal employee working on an intermittent schedule, for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per calendar month, is eligible to enroll in a health benefits plan under this part as follows:

(i) If the employing office expects the employee to work at least 90 days, the employee is eligible to enroll upon notification of the employee's eligibility by the employing office, and

(ii) If the employing office expects the employee to work for fewer than 90 days and the employee actually works for fewer than 90 days, the employee will generally be ineligible to enroll in FEHB because the employee will not be employed at the end of the waiting period applicable to these employees. However, if the expectation changes and the employee is expected to work for 90 days or more, that individual is eligible to enroll upon notification by the employing office, but enrollment (including the effective date of coverage) must be no later than the end of the waiting period ending the 91<sup>st</sup> day after the first day of employment.

(2) An employee working on a temporary appointment, an employee working on a seasonal schedule of less than 6 months in a year, or an employee working on an intermittent schedule for whom the employing office expects the total hours in pay status (including overtime hours) plus

qualifying leave without pay hours to be less than 130 hours per calendar month is generally ineligible to enroll in a health benefits plan under this part. If the expectation of hours of employment changes to 130 hours or more per month for a non-Postal employee, that employee is eligible to enroll in a health benefits plan under this part as described in paragraph (j)(1)(i) of this section.

(3) Once an employee is enrolled under this paragraph (j), eligibility will not be revoked, regardless of his or her actual work schedule or employer expectations in subsequent years, unless the employee separates from Federal service, receives a new appointment (in which case eligibility will be determined by the rules applicable to the new appointment), or exceeds 365 days in nonpay status in accordance with § 890.303(e) (subject to extension, if applicable, for qualifying leave without pay as defined at paragraph (j)(4) of this section).

(4) For purposes of this paragraph (j), “qualifying leave without pay hours” means hours of leave without pay for purposes of taking leave under the Family and Medical Leave Act, for performance of duty in the uniformed services under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 et seq., for receiving medical treatment under Executive Order 5396 (Jul. 7 1930), and for periods during which workers compensation is received under the Federal Employees Compensation Act, 5 U.S.C. chapter 81.

(5) Each temporary employee who is initially eligible for FEHB coverage on the basis of this paragraph (j) is entitled to enroll in accordance with § 890.301(a). A temporary employee who is currently eligible under 5 U.S.C. 8906a (with no Government contribution) but who is not

enrolled on [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], and who would also meet eligibility requirements on the basis of paragraph (j), is entitled to enroll (with a Government contribution) on the basis of paragraph (j) in accordance with § 890.301(h)(4)(ii). A temporary employee who is enrolled under 5 U.S.C. 8906a (with no Government contribution) on [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], and who would also meet eligibility requirements on the basis of paragraph (j), is entitled to change enrollment (with a Government contribution) on the basis of paragraph (j) in accordance with § 890.301(h)(4)(ii).

(k) The Director, upon written request of an employer of employees other than those covered by 5 U.S.C. 8901(1)(A), may, in his or her sole discretion, waive application of paragraph (j) of this section to its employees when the employer demonstrates to the Director that the waiver is necessary to avoid an adverse impact on the employer's need to manage its workforce. However, a Tribal employer participating under 25 U.S.C. 1647b may provide a written notification to the Director that it has chosen not to apply paragraph (j) of this section for its workforce.

3. Amend §890.301 as follows:

- a. Revise the heading of paragraph (h).b. Redesignate paragraph (h)(4) as paragraph (h)(4)(i).
- c. Add paragraph (h)(4)(ii).

The revision and addition read as follows:

**§890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.**

\* \* \* \*

(h) *Change in employment status or entitlement to Government contribution.* \* \* \*

(4) \* \* \*

(ii) A change in entitlement to Government contribution as a result of becoming eligible for coverage under § 890.102(j).

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[FR Doc. 2014-24652 Filed 10/14/2014 at 11:15 am; Publication Date: 10/17/2014]